INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 215

ARTHUR GOODWYN BILLINGS, PETITIONER

v.

KARL TRUESDELL, MAJOR GENERAL, UNITED STATES ARMY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 52–55) is reported at 135 F. (2d) 505. The opinion of the district court (R. 38–48) is reported at 46 F. Supp. 663.

JURISDICTION

The judgment of the circuit court of appeals was entered May 5, 1943 (R. 56). The petition for a writ of certiorari was filed July 30, 1943, and was granted October 11, 1943 (R. 56). The jurisdiction of this Court rests upon Section 240

(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether petitioner, a registrant under the Selective Training and Service Act of 1940 who reported for induction as ordered by his draft board, is lawfully in the custody of the Army of the United States, despite his refusal to subscribe to an oath of allegiance and obedience.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are set forth in the Appendix, *infra*, pp. 35 *et seq.*

STATEMENT

Pursuant to the Selective Training and Service Act of 1940 (see pp. 35–37, *infra*) petitioner registered in the first draft registration in October 1940, with Local Board No. 1 of Ottawa County, Kansas, expressing on his card his intention never to serve in the army (R. 12). After physical examination petitioner was classified in I–B, as fit only for limited service because of defective vision; he later was classified in I–H [1] because he was then older than 28 years; subsequently he was placed in I–A after the Local Board's denial

[1] I–H is an abolished classification in which men over 28 years of age and without dependents were placed pursuant to 55 Stat. 621 at the time when, prior to the entry of the United States into the war, men over 28 were not being drafted.

of his claim to classification as a conscientious objector (R. 12–13). On appeal petitioner's I–A classification was affirmed (R. 12–13).[2]

Petitioner, a well-educated person (R. 13–14)[3] adhering to an intellectual position which he describes as "somewhat like that" of Mohandas K. Gandhi (R. 16), had determined never to serve in the army (R. 12). He desired, however, to comply with all of the Selective Service requirements short of actual induction into the armed forces in order to avoid subjecting himself unnecessarily to civil penalties (Pet. 2–3). He consulted with draft officials in Texas and members of the University of Texas law faculty, and apparently concluded that taking the oath of induction was a prerequisite to becoming a member of the armed forces (R. 24–25). He determined not to take such oath and anticipated going to a civil prison rather than to a military guard house (R. 24). He was ordered by his local board to report on August 12, 1942, at 10:45 A. M. at

[2] Petitioner acknowledges that he was "fairly" allowed to present his claim to classification as a conscientious objector (R. 12–13).

[3] Petitioner, who is now 32 years old (R. 12), was graduated from the University of Kansas in 1933, spent two years at the University of Paris, served three years in the American Embassy at Moscow, and in 1938 traveled for four months in the Orient; he then studied for three years at Harvard University where he received his master's degree and passed his general examinations looking toward a doctorate, and thereafter taught economics at the University of Texas (R. 13–14).

Minneapolis, Kansas, in order to proceed thence to the induction center at Fort Leavenworth (R. 18–19). In order to prevent the army authorities from making notations on the induction order and returning it to his draft board he later tore up the paper (R. 18, Pet. Exh. 1). Nevertheless, compliant with the order, he proceeded to Kansas City (R. 31), apparently en route to Minneapolis, Kansas, in the hope that he might be rejected for defective eyesight (R. 29), but determined to refuse to take the oath (R. 32), the taking of which he deemed necessary for inception of military jurisdiction over him (R. 31). While at Kansas City he inquired of the Federal Bureau of Investigation, the United States Attorney, and the United States Marshal as to where he might surrender to civil authorities for refusing to take the oath in the event that he should pass his physical examination (R. 31–32).[4] Petitioner also called his local draft board and was told by the secretary of the board that he would be reported delinquent for failing to appear in Minneapolis, but that a bus bearing the selectees who were required to report from Minneapolis

[4] Petitioner had earlier written a letter of resignation to the University of Texas stating in advance of the event that he had passed his physical examination, had been ordered into the Army, had refused to serve, and therefore probably would be arrested and imprisoned (R. 29). It is likely, however, that this letter was never sent, since after acceptance into the Army petitioner by telegram resigned from the university faculty (R. 23).

would pass through Victory Junction, Kansas, at a designated time (R. 18–19). On August 12, at Victory Junction, Kansas, he joined the group selected for induction and was transported to the induction center at Fort Leavenworth (R. 19).

At Fort Leavenworth petitioner and his group spent the night in the barracks, and next morning were conducted by a soldier to the mess hall for breakfast; thereafter petitioner was given both physical and mental examinations, at the end of which he was informed that he had been accepted for I–B limited service (R. 49, 19–21). Upon being escorted to the presence of Lieutenant Nemec and Captain Milligan at the induction office he informed these officers that he was going to refuse to serve in the army. He was then told that "you are already within our jurisdiction." (R. 21.)[5] Petitioner told the officers that he wanted to surrender to civil authorities and learned that he would not be permitted to do so (R. 21), but he was allowed to use the telephone and thereby procured the services of an attorney, William D. Reilly, whom he retained to file a petition for habeas corpus on his behalf (R. 21–22). Next, Lieutenant Nemec read petitioner the oath of

[5] The transcript of record as originally filed with this Court recites only that responsively to petitioner's statement that he would refuse to serve in the Army the officers told him "you are already" (Tr. 28), but by stipulation the parties have agreed to supply the phrase, "in our jurisdiction," following the word "already" (R. 21).

induction to which petitioner refused to respond by standing or raising his hand, although requested to do so, and to which he replied, "I do not. I refuse to take this oath" (R. 22). The Lieutenant informed petitioner that his refusal made no difference, that "you are in the Army now" (R. 22, 29).[6] Thereupon Lieutenant Nemec ordered petitioner to be fingerprinted and upon his refusal to do so he was ordered to the guardhouse, and military charges were preferred against him for willful disobedience to a lawful command of his superior officer (R. 22, 25, 31, 45, 53; Pet. 5).[7] Subsequent attempts by the military authorities and others to reason with and persuade petitioner to recognize and perform his duty proved unavailing (R. 32–34).

On August 14, 1942, petitioner by his attorney, Reilly, filed a petition for writ of habeas corpus with the District Court for the District of Kansas. This petition alleged that since petitioner was not a member of the armed forces he was being unlawfully restrained by respondent, that he was not subject to military jurisdiction and that if he

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[6] Petitioner testified that he was then "simply flabbergasted * * * because * * * everybody said without any hesitation that you were not in the Army until you subscribed to the oath of induction * * *" (R. 31).

[7] By the stipulation correcting the record, suggested by petitioner (see n. 5, *supra*), an addition to petitioner's testimony as it appears at page 31 of the typewritten transcript has been supplied to make it clear that the sequence of events was: (1) the tendering of the oath, (2) the order requiring fingerprinting, (3) detention in the guardhouse (R. 21–22).

violated any laws they are civil laws. (R. 1.) On August 15, 1942, the writ issued (R. 2–3). Respondent filed a return (R. 3–5),[*] petitioner replied thereto (R. 5–6), and on August 18, 1942, a hearing was had (R. 6) in which petitioner testified in his own behalf (R. 11–38). On September 11, 1942, the district court discharged the writ and remanded petitioner to respondent's custody (R. 50), holding that petitioner was subject to military jurisdiction, that induction occurred "by operation of law" as a result of "not the acceptance by him of the oath, but the acceptance by the government of him as a soldier"; the court further ruled that "the giving of an oath and admonition that you now are in the Army, constitute mere formality" (R. 45). The Circuit Court of Appeals for the Tenth Circuit unanimously affirmed the judgment of the district court. That court was of the opinion that the process of induction was completed, regardless of petitioner's choice in the

[*] The return discloses that petitioner, under charge of violation of Article 64 of the Articles of War, Act of June 4, 1920, ch. 227, subc. II, sec. 1, 41 Stat. 801, 10 U. S. C., sec. 1536, was confined at the post guardhouse. The charge specified that petitioner "having received a lawful command from 1st Lt. Godfrey B. Nemec, Infantry, his superior officer, to affix his fingerprints to an induction record, did at Fort Leavenworth, Kansas, on or about August 13, 1942, willfully disobey the same" (R. 4). Article 64 provides in part: "Any person subject to military law who, on any pretense whatsoever * * * willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct."

matter, "when the oath was read to petitioner and he was told that he was inducted into the Army." (R. 55.)

SUMMARY OF ARGUMENT

1. The 2nd Article of War provides in part that "all * * * persons lawfully * * * drafted * * * into" the military service are subject to military law "from the dates they are required by the terms of the call, draft or order to obey the same." This provision has been modified by the Selective Training and Service Act of 1940 in two possible respects, neither of which has any effect on the outcome of this case: *First,* Section 3 provides in part that no man shall be inducted unless and until he is acceptable to the armed forces and his fitness has been determined, and this provision, which postpones selectees' induction until the armed forces have accepted them, may have the effect as well of postponing the attachment of military law until the selectee has been accepted; *second,* Section 11 provides in part that "no person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted * * * or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act," and this provision, which because of the concluding saving clause could be construed to save the entire jurisdiction which the Articles of War confer on courts martial over selectees, is shown by the legislative

history to have been intended to deprive courts martial of jurisdiction to try selectees for failure to report for induction. Section 3 has no effect here because petitioner has been accepted by the Army, and was accepted prior to the time he sought to leave the post, and therefore the optimum effect of Section 3 as a modification of Article 2 cannot benefit petitioner. Section 11 has no effect here because petitioner is not being held for refusal to report for induction nor for any other violation of the Selective Service Act. He is in military custody charged with refusal, after the Army had accepted him and read the oath to him, to obey an order of his superior officer. This offense has no counterpart in the Selective Service Act and was committed after petitioner became subject to military law; thus petitioner is lawfully in military custody.

2. Approaching the case differently, petitioner is rightfully in the custody of the Army because he is a soldier in the Army and has been since the Army determined that he was acceptable for service. The effect of Article 2 of the Articles of War doubtless would be to induct a selectee into the armed forces from the moment when he is required to report for induction, as in World War I, if it stood alone. But Section 3 of the Selective Training and Service Act of 1940 has postponed the time of induction until the armed forces have determined that the selectee is accept-

able. No provision in the statutes or regulations further postpones the time of induction or requires the taking of an oath. The controlling Army Mobilization Regulations provide that the oath of enlistment shall be given the selectees but they also provide that failure of a selectee to take the oath will not affect his obligation to the United States. Thus the regulations treat the oath as a formality to bring home to the new soldier the significance and obligations of his new status, and not as a step upon which effectiveness of induction depends. Petitioner was therefore properly restrained from leaving the post even though the oath had not yet been read to him, and his refusal to take the oath is without significance.

3. Even if the foregoing arguments were unsound, petitioner would not be entitled to release from military custody. The Army Regulations require merely that the oath be read to the selectee and state that his refusal to subscribe to it does not alter his obligation to the United States. The oath was read to petitioner and if he was not already in the Army he thereupon entered it. The Army was within its rights in restraining petitioner from leaving the post before the oath was read to him. Petitioner had proved acceptable to the Army and the Army had jurisdiction to protect its interest in a conscript until the final step in induction could be taken. This step having been taken, petitioner is therefore in the Army, and as the act for which he is held awaiting mili-

tary trial occurred after his entry into the Army he is properly in respondent's custody.

ARGUMENT

PETITIONER IS LAWFULLY IN THE CUSTODY OF THE ARMY

Introductory.—Petitioner seeks release through habeas corpus from the custody of the Army, on the ground that he has not been lawfully inducted into the Army and therefore is entitled to be freed for trial in the civil courts for failure to report for induction under the Selective Training and Service Act of 1940. He also contends that he was improperly denied Selective Service classification as a conscientious objector and that he should be released for this additional reason, but this issue is not properly presented and is not before the Court.[9] He asserts also that for various reasons Congress is without constitutional power to enact and enforce a compulsory military

[9] This is so for two reasons: *first*, the issue is not framed by the pleadings, for petitioner's reply to the return (R. 5–6) makes it clear, even if the petition for a writ (R. 1) does not, that the ground advanced for relief was that since he had not agreed to the oath he had not been inducted into the Army, and his reference to his being a conscientious objector was to explain why he was refusing to serve and not to attack his draft classification; *second*, the record is inadequate for decision of this question since the Selective Service file, containing the evidence on which the draft boards acted, is not in the record. Cf. *Miss. Valley Barge Co.* v. *United States*, 292 U. S. 282. There is no suggestion that petitioner sought to introduce his file and that it was denied him, as in *Bowles* v. *United States*, 319 U. S. 33.

service law, but this can hardly be considered an open question. See *Selective Draft Law Cases*, 245 U. S. 366; cf. *Falbo* v. *United States*, No. 73, decided January 3, 1944.

I

PETITIONER BECAME FULLY AMENABLE TO MILITARY JURISDICTION NOT LATER THAN WHEN HIS PHYSICAL EXAMINATION WAS COMPLETE AND HE PROVED ACCEPTABLE TO THE ARMY

Petitioner is held in custody charged with the violation of the 64th Article of War (R. 4), which provides in part as follows:

> Any person subject to military law who, on any pretense whatsoever, * * * willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct. (10 U. S. C. § 1536.)

Whether petitioner is subject to this article depends on whether he is a "person subject to military law," and this in turn depends on the meaning and continuing effect to be given to the following portions of the 2nd Article of War (10 U. S. C. § 1473):

> The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" * * *, whenever used in these articles:
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> (a) All officers, * * * and soldiers belonging to the Regular Army of the

> United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in the said service, from the dates they are required by the terms of the call, draft or order to obey the same;[10]

Petitioner, having been lawfully ordered into the military service, is in the last category and under the terms of Article 2 standing alone he became subject to military law on August 12, 1942, the date when he was required by the terms of the call to present himself for induction.[11] Petitioner's disobedience of an officer's order to submit to fingerprinting occurred after that date and also

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[10] The potential reservoir from which persons in the last category could come was, before enactment of the Selective Training and Service Act of 1940, indicated by Section 1, c. 187, of the Act of April 22, 1898, (30 Stat. 361, 10 U. S. C., § 1), which provides:

"All able bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States under and in pursuance of the laws thereof, between the ages of eighteen and forty-five years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States."

[11] As explained hereinafter (pp. 19–25), it is our position that Article 2 has been modified by Section 11 of the Selective Training and Service Act of 1940, so that it no longer subjects conscripts to court martial for failure to obey the order to appear for induction, but it has not been otherwise modified.

after petitioner had complied with the call at least to the extent of presenting himself, being examined and being accepted by the Army. Since petitioner's detention is based on that disobedience, his detention is lawful under Article 2 unless that Article has been suspended or made inoperative in this connection by the Selective Training and Service Act of 1940,[12] hereinafter referred to as the Selective Service Act.

Sections 3 and 11 of the Selective Service Act are those which must be considered to determine the extent to which Article 2 is still operative. First considering Section 3 of the Selective Service Act, this provision may modify Article 2, but if so such modification does not render Article 2 inoperative and does not affect the result herein. Section 3 contains two provisos as follows (50 U S. C. App. Supp. I, § 303):

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[12] Plainly the Articles of War are applicable generally to all soldiers in the Army, including those who were drafted into the Army pursuant to the provisions of the Selective Training and Service Act of 1940. See *Franke* v. *Murray*, 248 Fed. 865 (C. C. A. 8); *United States* v. *Bullard*, 290 Fed. 704 (C. C. A. 2), certiorari denied, 262 U. S. 760; *United States ex rel. Bergdoll* v. *Drum*, 107 F. (2d) 897 (C. C. A. 2), certiorari denied, 310 U. S. 648, so holding under the predecessor articles containing a substantially identical Article 2 (39 Stat. 651), and the Selective Draft Act of 1917. This conclusion does not, however, preclude suspension of certain provisions of the Articles of War, pursuant to Section 16 of the Selective Training and Service Act (50 U. S. C. App., § 316) in case of inconsistency with certain provisions in the latter act.

> *Provided further,* That no citizen or subject of any country who has been or who may hereafter be proclaimed by the President to be an alien enemy of the United States shall be inducted for training and service under this Act unless he is acceptable to the land or naval forces.[13] The President is authorized from time to time, whether or not a state of war exists, to select and induct into the land and naval forces of the United States for training and service, in the manner provided in this Act, such number of men as in his judgment is required for such forces in the national interest: * * * *Provided further,* That no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined: * * *

There is no conflict between these provisos and Article 2 and hence no modification of the latter by the former, unless "inducted" has the same meaning as becoming "subject to military law." If these terms are synonymous,[14] the effect of these

[13] Presumably this proviso, inserted after the declaration of war (Act of December 20, 1941; 55 Stat. 844), was enacted to enable the armed forces to reject enemy aliens notwithstanding the provision in Section 4 of the Selective Service Act (50 App. U. S. C. § 304) forbidding discrimination on account of race or color.

[14] Becoming "subject to military law" is one consequence of becoming a soldier in the Army; the consequential expres-

provisos is to amend Article 2 to provide that a conscript becomes subject to military law, not at the time when he is to report for induction, but when the Army, after examining him, accepts him for service. However, since the manifest purpose of the provisos is to give the armed services the right to reject all selectees whom they regard as physically or mentally unfit for service, or disloyal, it is probable that these provisos were not intended to decrease the extent of military jurisdiction over the selectees unless and until they are rejected. In this view, a selectee would become subject to military law from the moment when, responsive to the call, he arrived at the induction station[15] and would remain so unless he should be rejected. This view is more consistent with the structure of the process: the Selective Service System, a civil agency whose authority is civilly enforceable, has the function of selecting and delivering men to the armed forces for examination, acceptance or rejection by the latter; the function of Selective Service is completed when

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sion is used throughout the Articles of War; generally it would properly be construed as synonymous for draft purposes with being "inducted."

[15] Standing alone, Article 2 would subject a selectee to military law from the moment he was required to report and regardless of whether he actually did. See, however, footnote 11, *supra*, p. 13.

the men are delivered, *i. e.*, when they arrive at the induction station (Selective Service Regulations, Articles 101, 102, 601.8, 633.8, Appendix, *infra*, pp. 37–39); there the function of the armed forces begins and under their regulations the men are, by physicians selected by them, examined and then accepted or rejected (War Department Mobilization Regulations 1–7, Par. 6–13, inc.);[16] those accepted thereupon become members of the service to which they are assigned. The system thus seems to contemplate that military law attach as soon as the function of the civil agency—delivery of the men to the armed forces—has been performed. Moreover, the circumstances after the men are delivered make military law the more appropriate governing force: should a selectee then perform an act derogatory to the draft process or the armed forces, it would be anomalous if his offense were an ordinary civil wrong. Finally, only this view is consistent with the Act of October 6, 1942 (56 Stat. 770; 50 U. S. C. App. Supp. II, § 516; Appendix, *infra*, p. 41), by which Congress extended the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940 to selectees from the date of receipt of the order to report to the date of

[16] A copy of War Department Mobilization Regulations 1–7 has been lodged with the clerk, together with Army Regulations 615–500, by which M. R. 1–7 was superseded.

actually reporting. The inference is clear that Congress supposed that selectees who had reported for induction were already entitled to those benefits, which means that Congress supposed they were "persons in military service" from the moment of reporting for induction.

There is, however, no occasion here to determine whether petitioner became subject to military law when he reported for induction or when the Army accepted him, for under either view he is now subject to military jurisdiction and was at the time he disobeyed his superior's order. Also, under either view he was subject to military jurisdiction when, as found by the trial court (R. 49), after his acceptance by the Army for limited service, he sought to leave the post and was prevented from doing so.

This conclusion is sound unless the word "inducted" implies acquiescence on the part of the selectee. The provision (*supra*, p. 15) authorizing the President "to select and induct into the land and naval forces of the United States for training and service, * * * such number of men as in his judgment is required" shows that the selectee's acquiescence is unnecessary for induction. The President is authorized "to select and induct." The language employed contemplates that both these acts are fully performed by the unilateral exercise of authority by the President; neither act is dependent on the will or acquiescence of the conscript. This conclusion is borne out by other provisions of the Selective

Service Act. Section 1 (b) (Appendix, *infra*, p. 35) contains a declaration that the obligations of military "service should be shared generally in accordance with a fair and just system of selective *compulsory* military training and service" [emphasis ours]. Section 3 (a) (Appendix, *infra*, pp. 35–36) provides in part that "Except as otherwise provided in this Act, every male citizen * * * between the ages of eighteen and forty-five * * * shall be *liable* for training and service in the land or naval forces of the United States" [emphasis ours]. Section 4 (a) (Appendix, *infra*, p. 36) states that selection of men shall be in an impartial manner from those "who are liable for such training and service." The effect of these provisions is plain: service in the armed forces is not volunteer service dependent on the consent of the selectee.[17] It is an obligation imposed by law. Consequently induction into the armed forces occurs regardless of the consent of the selectee and therefore is effective when the Army accepts him for service.

Article 2 and other provisions of the Articles of War have been modified and suspended, however, but in connections not here involved, by Section

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[17] In only one instance does the Selective Service Act make service contingent on the selectee's consent. The concluding proviso in Section 3 (a) (Appendix, *infra*, p. 36) states that "no man, without his consent, shall be inducted for training and service under this Act after he has attained the forty-fifth anniversary of the day of his birth."

11 of the Selective Service Act (Appendix, *infra*, pp. 36–37). This section, after detailing the actions which are made criminal in the Act, provides that "upon conviction in the district court of the United States having jurisdiction" the offender shall suffer imprisonment up to five years, fine, or both, "or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct."[18] The section then states: "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted * * * or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act." The effect of this provision is to deprive courts martial of jurisdiction to try any person for an act which is made an offense to be tried by the civil courts under the Selective Service Act unless that person has been actually inducted into the armed forces. It thus takes away what the preceding sentence had seemed to bestow,

[18] If Section 11 said no more, the question would be presented in prosecutions for failure to report for induction whether military jurisdiction attached at the time when the selectee is required to report or whether by virtue of Section 3 (see discussion, *supra*, pp. 15–17) military jurisdiction was postponed until the armed forces had accepted the conscript. The legislative history shows (see *infra*, pp. 22–25) that members of Congress believed that the language quoted above would give military and civil courts concurrent jurisdiction over such cases and for that reason added the provision next quoted in the text.

namely jurisdiction of courts martial over the bulk of cases arising under the Act. However, resort to the legislative history of this provision is necessary in order that this effect be given it, for its meaning does not clearly appear from its language. This is so because of the saving clause ("or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act"), which saves to courts martial jurisdiction conferred by laws in effect when the Selective Service Act was enacted, for under the Articles of War (Arts. 2 (a), 58 and 61; 10 U. S. C. §§ 1473 (a), 1530 and 1533) a selectee who failed to report would be a deserter and absent without leave and thus "subject to trial by court martial under laws in force prior to the enactment of" the Selective Service Act.[19] The language of the saving clause would thus, it could be argued, confer coordinate jurisdiction on civil and military courts over such offenses. The legislative history (discussed *infra,* pp. 22–25) establishes, however, that the whole purpose of the provision was to withdraw from courts martial jurisdiction over the offense of failure to report. The "unless" clause was evidently intended to save military jurisdiction over other offenses, such as those occurring after the

[19] As pointed out, *supra*, p. 14, footnote 12, it is clear that drafted soldiers are subject to the Articles of War. Thus no general exemption from the Articles of War can be found in the terms of the Selective Service Act, and the Articles of War are therefore "laws in force prior to the enactment of this Act" to which the Selective Service Act expressly defers.

selectee reported at the induction station. While this provision is effective to deprive courts martial of jurisdiction in cases such as *Bowles* v. *United States,* 319 U. S. 33, it has no effect on the case at hand. Petitioner is not held in military custody for a violation of the Selective Service Act, but for a violation of the 64th Article of War, which does not have a counterpart under the Selective Service Act. Consequently, giving its language and purpose maximum effect Section 11 has no bearing on the validity of the custody here involved.

The legislative history of this provision is the following: As originally framed, the Burke-Wadsworth bill, which became the Selective Service Act, expressly conferred on civil and military courts concurrent jurisdiction over the offense of failure to report for induction. On the Senate floor, Senator Bone introduced an amendment to substitute for the concurrent jurisdiction provision the following (86 Cong. Rec. 10895):

> Shall be tried exclusively in the district courts of the United States having jurisdiction thereof and this class of cases shall not be tried by the military and naval courts martial unless such person has been actually inducted for the training and service prescribed herein or unless he is subject to trial by court martial under laws in force prior to the enactment of this act. Cases brought under this provision shall be given preference for trial by the respective district courts.

It will be observed that this amendment was confined to "this class of cases," which the context showed was prosecution for failure to report for induction.[20] The discussion of his amendment by Senator Bone shows that he intended it to apply only to such cases, for he did not believe that "if a young man * * * fails to answer, he should be tried by a military court martial." The amendment was adopted. (86 Cong. Rec. 10895.)[21]

In conference the section into which the Senate placed the Bone amendment was redrafted into Section 11 as it now stands. The conferees retained the Bone amendment but changed its language somewhat. Evidently the change in language was not thought to change the meaning of the amendment or to enlarge its limited effect, for the statement of the House conferees was (86 Cong. Rec. 12039):

> The Senate bill provided that persons subject to the bill who fail to report for duty as ordered should be tried exclusively in the district courts of the United States and not by military and naval courts mar-

[20] The original language of this portion of the bill is set out in full in 86 Cong. Rec. 11710.

[21] An identical amendment was introduced in the House by an opponent of the bill (86 Cong. Rec. 11710) but was defeated (86 Cong. Rec. 11716), apparently because of a feeling on the part of some members that it could be used to obstruct the Selective Service process (86 Cong. Rec. 11712, 11715).

tial, unless such persons had actually been inducted for the training and service prescribed in the bill or unless they were subject to trial by court martial under laws in force prior to the enactment of the bill. The House amendment in such cases gave the courts martial and the district court concurrent jurisdiction, and made failure of persons to report for duty subject to the laws and regulations concerning that branch of the land and naval forces to which they were assigned from the date they were required by the terms of the order to obey the same, even though they had not actually been inducted.

The conference agreement contains the provisions of the Senate bill in this respect.[22]

It is evident, therefore, that giving it the optimum effect, the provision was intended to restrict the jurisdiction of courts martial as conferred by the Articles of War only as to acts made criminal by the Selective Service Act, and was

[22] The Senate conferees stated (86 Cong. Rec. 12084): "The Senate provided that draftees should be under the jurisdiction of the civil courts in the matter of violations *of this act* prior to induction for training, and thereafter to military and naval courts martial. * * * The conferees adopted the Senate provision." [Emphasis added.] This statement may suggest a less limited application than the House statement, but as it is limited to "violations of this act" it would not give the provision sufficient scope to withdraw the jurisdiction conferred by Article 2 over petitioner, since he is not being held for a violation of the Selective Service Act.

not intended to limit the jurisdiction of courts martial over other offenses proscribed by the Articles of War.

In summary, petitioner appeared for induction. He was also determined acceptable to the Army. By reason of one or the other of these circumstances he became subject to military law. Thereafter he committed an act which is an offense under the Articles of War; he is answerable therefor and is lawfully held in custody awaiting trial.[23]

II

HAVING IN ANY EVENT BECOME A SOLDIER WHEN ACCEPTED BY THE ARMY, PETITIONER BECAME SUBJECT TO MILITARY JURISDICTION BY REASON OF THAT STATUS ALONE

In Point I we have shown that military jurisdiction attached to petitioner under the Articles of War even though he be regarded as a civilian at

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[23] As the district court suggested (R. 45), it is not clear that petitioner has committed a crime under Section 11 of the Selective Service Act. His draft board ordered him to report for induction and he did everything necessary for the Army to pass on his acceptability. His disobedience was of an order authorized by military regulations, not by the Selective Service agencies. His suggestion (Br. 33) therefore, that his real offense was failure to report ready to accept induction (which if correct would place him within the possible scope of the Congressional purpose), is not well founded. Cf. *United States* v. *Collura*, (Mar. 3, 1943, S. D. N. Y.) not reported, affirmed (C. C. A. 2, December 21, 1943), not yet reported, where the selectee refused to take the physical examination.

the time the order to be fingerprinted was issued. We also contend, however, that he was already a soldier at the time. If he was, the writ of habeas corpus was properly denied since as a soldier he is in the custody of the Army charged with an offense within the military jurisdiction. *Ex parte Reed*, 100 U. S. 13; *In re Grimley*, 137 U. S. 147; *In re Morrissey*, 137 U. S. 157; *Johnson* v. *Sayre*, 158 U. S. 109.

We submit that petitioner became a soldier in the Army when the Army accepted him and that this acceptance became effective when the examining physicians, whom the Army had charged with the determination of the question whether petitioner was acceptable for service under Army standards, determined that he was acceptable for limited service. Petitioner's induction occurred then rather than when the oath was read to him. *United States ex rel. Diamond* v. *Smith*, 47 F. Supp. 607 (D. Mass.). This conclusion follows from the legislation discussed in the preceding division, *supra*, pp. 12–25, and from the controlling Army regulation.[24]

As shown above, Article 2 of the Articles of War was in effect when the Selective Service Act was enacted and is still in effect except insofar as inconsistent with that Act. Article 2 (a) con-

[24] This view is the one which the Army takes. See letter from Col. Fred W. Llewellyn, Chief, Military Affairs Section, J. A. G. D., to Maj. Bernard A. Brown, Assistant Corps Area Judge Advocate, Appendix, *infra*, p. 42 *et seq.*

templates the contingency of a draft army and provides that conscripts shall be "subject to military law" from the instant when they are required by the draft call to be present for induction.[25] This provision was copied from the superseded Articles of War (39 Stat. 650 *et seq.*) which were in effect from 1916 to 1920 and had the effect of subjecting a conscript to military law from the moment of the draft call (*Franke* v. *Murray,* 248 Fed. 865 (C. C. A. 8); *United States* v. *Bullard,* 290 Fed. 704 (C. C. A. 2), certiorari denied, 262 U. S. 760; *United States ex rel. Bergdoll* v. *Drum,* 107 F. (2d) 897 (C. C. A. 2), certiorari denied, 310 U. S. 648). The conscript was in the Army from the moment he became subject to military law, under the procedure followed in World War I.[26] Because of Section 3 of the present Selective Service Act (discussed above, pp. 15–

[25] Probably Article 2 should be read with 10 U. S. C. § 1, 30 Stat. 361 (Section 1, c. 187, Act of April 22, 1898), which states:

"All able-bodied male citizens of the United States, and persons of foreign birth who shall have declared their intention to become citizens of the United States under and in pursuance of the laws thereof, between the ages of eighteen and forty-five years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States."

[26] Section 157 of the Selective Service Regulations prescribed by the President under the Selective Draft Act of 1917 provided that from "the day and hour" specified in the draft call "such registrant shall be in the military service of the United States."

18), however, the moment when a selectee becomes a soldier is postponed until the Army has accepted him, although as we pointed out, *supra*, pp. 16–18, he may become subject to military law prior to his acceptance.

No provision of law or regulation exists which further postpones a selectee's entry into the Army. As shown above (pp. 19–25), Section 11 of the Selective Service Act has a limited effect in postponing the attachment of military law over selectees until their arrival at the induction station, because it removes offenses theretofore committed from the jurisdiction of courts martial, but it neither has nor was intended to have any effect at all on the time of induction into the Army. Its neutrality on this question affirmatively appears from its provision that a person may be tried by courts martial for violations of the Selective Service Act if "such person has been actually inducted for the training and service prescribed under this Act * * *" Plainly this provision acknowledges that one must look elsewhere to learn when one "has been actually inducted."[27]

[27] Petitioner's argument that Section 11 transforms a compulsory draft law into a volunteer service law in which a registrant has the choice of service or civil prison ignores the legislative history of Section 11. Congress intended the civil punishment provision to have merely the effect of transferring enforcement of the Act from courts martial to civil courts, not to permeate a compulsory draft law with conditions requiring the selectee's consent. Indeed, in the absence of Section 11 petitioner could as well argue that the Act makes service voluntary because it gives him the choice of service or military prison.

Neither Article 109 (Appendix, *infra*, pp. 39–40) of the Articles of War nor Army Mobilization Regulation 1–7, Par. 13e (Appendix, *infra*, p. 40), alters the conclusion that accession to soldierhood is complete when the Army accepts a selectee. By its terms[28] Article 109 applies only to men who enlist, *i. e.*, who volunteer for a fixed number of years service in the Regular Army. Moreover, when this article was enacted in 1920, the identical provisions in the predecessor Articles of War had already been construed as inapplicable to draftees, administratively in 1 Op. J. A. G. 169 (1917), and judicially in *Franke* v. *Murray*, 248 Fed. 865, 868–869 (C. C. A. 8, 1918).[29] Finally if Article 109 did apply to selectees, it would support the conclusion we urge, since it provides that every "soldier" shall take the oath and thus contemplates that the individual who is being asked to take the oath has already, at some earlier stage, become a soldier.[30] The Army Regulations do not condition a selectee's entry into the Army on his subscribing to the oath. While Mobilization Regulation 1–7, Par. 13e (Appendix, *infra*, p. 40)

[28] "At the time of his enlistment every soldier shall take the following oath or affirmation * * *"

[29] To same effect are *United States* v. *Bullard*, *supra*, and *United States ex rel. Bergdoll* v. *Drum*, *supra*, both decided between the enactment of the Articles of War and that of the Selective Service Act.

[30] See *United States ex rel. Diamond* v. *Smith*, 47 F. Supp. 607, 609 (D. Mass.): "The taking of the oath would seem to follow induction, not precede it."

suggests the thought that induction into the Army is not complete until the oath has been administered to the selectee, this suggestion is emphatically contradicted by a subsequent sentence in the same provision, the only one which deals specifically with the selectee who, like petitioner, refuses to take the oath. This sentence states insofar as pertinent:

> * * * In the event of refusal to take an oath (or affirmation) by any individual he will not be required to receive it, but will be informed that this action does not alter in any respect his obligation to the United States.[31]

Thus the Army deems the selectee to be in the Army regardless of whether he takes the oath, which is wholly consistent with the view that the selectee was in the Army even before the oath was read to him, from the moment when he proved acceptable to the Army. This view is reinforced by another aspect of the Regulation's indifference to whether the selectee takes the oath. Article 109 provides that "at the time of his enlistment every soldier shall take the * * * oath," and the fact that the regulation dispenses with this requirement where the selectee wishes it indicates the Army's belief that the administration of the

[31] On September 1, 1942, this regulation was superseded by Army Regulations No. 615–500, in which Section 13 (e) (4) is substantially identical to the superseded provision except for the extension of the provision to declarant aliens.

oath to draftees is unnecessary, though desirable as a means of bringing home to them the significance and obligations of their new status.

Certainly there is nothing inherent in the process of being drafted into the Army which requires the giving or taking of an oath. An army of approximately 4,000,000 draftees was raised during World War I without the administration of an oath to them. (See 1 Op. J. A. G. 169 (1917), holding that the oath was not necessary; see also Section 157, Selective Service Regulations (1917), providing that the draftee is in the military service of the United States automatically from the moment when his call requires him to report.) In this connection, the statute law is not substantially different now than in the last war. Article 109 of the Articles of War is in the same language, and nothing in the Selective Training and Service Act of 1940 requires or even refers to an oath. Article 2 of the Articles of War is in the same language, insofar as pertinent. The applicable Army Regulation expressly dispenses with the taking of the oath if the selectee wishes not to take it. Plainly then, the selectee's entry into the Army is not postponed to the oath but is postponed only until the condition required by Section 3 of the Selective Service Act, acceptance by the Army, is fulfilled.[32]

[32] The Selective Service Regulations are ambiguous on the point in question. Article 633.9 (Appendix, *infra*, p. 39)

III

IF NOT PREVIOUSLY, PETITIONER BECAME A SOLDIER IN THE ARMY WHEN THE OATH WAS READ TO HIM

As stated in the preceding division, we believe that petitioner became a soldier in the Army when the Army determined that he was fit for service, and that the administration of the oath has no legal significance but is entirely an extra-legal formality designed to acquaint the selectee with the significance of his status. If we are in error in this, however, as well as in our belief, discussed in the first division of this brief, *supra*, pp. 12–25, that petitioner was subject to and is properly held for a violation of military law regardless of whether he is a soldier, petitioner is nevertheless properly in respondent's custody because once the oath was read to him everything was completed which under the statutes and regulations would transform him into a soldier.

As noted above (pp. 29–31), the controlling

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seems to suggest that induction is a step apart from acceptance. On the other hand, Article 633.8 (Appendix, *infra*, p. 38) speaks of the "induction or rejection" of selectees, thus using "induction" as synonymous with "acceptance." However, the Selective Service Regulations are not the controlling administrative regulations, for the function of Selective Service ends when the selected men are presented at the induction station for acceptance or rejection by the armed forces. Examination, acceptance, induction, and rejection are all within the province of the armed forces, to be governed by their regulations, as indeed Art. 633.8 expressly recognizes. In their reference to induction these regulations are informative rather than regulatory.

regulations state that the oath shall be read to the selectee and if he refuses to subscribe to it he is to be advised that his refusal in no way affects his obligations to the United States. If we improperly interpret this regulation as showing that the oath merely emphasizes the induction which had become effective as soon as petitioner was found fit for service, then the correct interpretation of the regulation must be that the induction became effective when the oath was read to petitioner even though he refused to subscribe to it. This conclusion follows from the fact that no statute requires that the oath be given to selectees, and the oath can acquire legal significance only as the formal step marking the acceptance of the selectee by the Army although that acceptance had already occurred when the Army, through the physicians chosen to examine the selectees, had found the selectee acceptable for service.

Petitioner is therefore, as the court below held (R. 55), lawfully in the Army's custody even under this view. The fact that prior to the time when the oath was read to him he had sought to leave the post and escape the Army and was restrained from doing so, is without significance. He had no right to leave at that juncture. When he appeared for the physical examination he subjected himself to the Army's determination whether he was fit for service and he must take the

consequences of having been found acceptable. The Army could have, if it has not indeed done so, made acceptance and induction automatic upon the determination of acceptability. If it has not done so, it has not thereby lost jurisdiction to restrain the acceptable men until the formal step in acceptance has been solemnized.

CONCLUSION

For the foregoing reasons, the decision of the court below should be affirmed.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
TOM C. CLARK,
Assistant Attorney General.
ROBERT S. ERDAHL,
EDWARD G. JENNINGS,
VALENTINE BROOKES,
Special Assistants to the Attorney General.
MALCOLM A. HOFFMANN,
Attorney.

JANUARY 1944.

APPENDIX

The Selective Training and Service Act of 1940, as amended (Acts of September 16, 1940, c. 720, 54 Stat. 885; Aug. 18, 1941, c. 362, 55 Stat. 626; Dec. 20, 1941, c. 602, 55 Stat. 844; Nov. 13, 1942, c. 638, 56 Stat. 1018),[33] in pertinent part provides:

> Section 1. (b) The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service. (50 U. S. C. App. 301 (b).)
>
> * * * * *
>
> Sec. 3. (a) Except as otherwise provided in this Act, every male citizen of the United States * * * who is between the ages of eighteen and forty-five at the time fixed for his registration, shall be liable for training and service in the land or naval forces of the United States: * * * *Provided further,* That no citizen or subject of any country who has been or who may hereafter be proclaimed by the President to be an alien enemy of the United States shall be inducted for training and service under this Act unless he is acceptable to the land or naval forces. The President is authorized from time to time * * * to select and induct into the land and naval forces of the United States for training and service, in the manner

[33] Amendments enacted after the facts of the present case arose in no way affect the pertinent provisions.

provided in this Act, such number of men as in his judgment is required for such forces in the national interest: * * * *Provided further,* That no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and service and his physical and mental fitness for such training and service has been satisfactorily determined: * * * *Provided further,* That no man, without his consent, shall be inducted for training and service under this Act after he has attained the forty-fifth anniversary of the day of his birth. (50 U. S. C. App., Supp. II, 303 (a).)

* * * * *

Sec. 4. (a) The selection of men for training and service under section 3 * * * shall be made in an impartial manner, under such rules and regulations as the President may prescribe, from the men who are liable for such training and service and who at the time of selection are registered and classified but not deferred or exempted: * * *. (50 U. S. C. App., Supp. II, 304 (a).)

* * * * *

Sec. 10. (a) The President is authorized—

(1) To prescribe the necessary rules and regulations to carry out the provisions of this Act. (50 U. S. C. App. 310 (a) (1).)

* * * * *

Section 11. Any person * * * who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act * * * shall, upon conviction in the district court of the United States having

jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act. * * * (50 U. S. C. App. 311.)

The Selective Service Regulations (32 C. F. R. 1941 Supp., 601.7 *et seq.*) in pertinent parts provide:

601.7. *Inducted man.*—An "inducted man" is a man who has become a member of the land or naval forces through the operation of the Selective Service System.

601.8. *Induction station.*—The term "induction station" refers to any camp, post, ship, or station at which selected men are received by the military authorities and, if found acceptable, are inducted into military service.

* * * * *

633.1. *Order to Report for Induction (Form 150).*—(a) Immediately upon determining which men are to report for induction, the local board shall prepare for each man an Order to Report for Induction (Form 150), in triplicate. * * *

* * * * * *

633.2. *Appointment of leader and assistant leader.*—(a) After selecting the registrants who are to fill the call, the local board shall designate one selected man to be the

leader of the group and one or more to be assistant leaders. * * *

* * * * * *

633.6. *Procedure before delivery.*—(a) At the time and place designated for the selected men to report for delivery, the local board shall:

(1) Call the roll of selected men.

(2) Read and issue the appointment of the leader and assistant leaders.

(3) Turn over to the leader the transportation request or tickets, the meal and lodging requests, and the records for the induction station.

(4) Notify the leader of arrangements that have been made at the induction station for the reception of the selected men.

(5) Specifically order the selected men to obey the leader and assistant leaders.

(6) Specifically order the selected men to report to the induction station.

* * * * * *

633.8. *Reception of selected men at the induction station and return of rejected men.*—In the manner and to the extent prescribed by regulations of the land or naval forces, the commanding officer of the induction station is required to have the selected men met at the railroad station or bus terminal, transported to the induction station, and provided with food and lodging after their arrival and pending their induction or rejection. In the manner and to the extent prescribed by the regulations of the land or naval forces, the commanding officer of the induction station is required to provide transportation and subsistence for the return of the selected men who have been rejected.

633.9. *Induction.*—At the induction station, the selected men found acceptable will be inducted into the land or naval forces.

As originally promulgated by the President (5 Fed. Reg., p. 3780) the Selective Service Regulations also contained the following provisions:

101. *The purpose of Selective Service.* The purpose of Selective Service is to secure an orderly, just, and democratic method whereby the military manpower of the United States may be made available for training and service in the land and naval forces of the United States, as provided by the Congress, with the least possible disruption of the social and economic life of the Nation.

102. *The processes of Selective Service.* Selective Service involves these processes: Registration, classification and selection, and delivery for induction. Registration is the process by which all males subject to registration under the selective service law are listed by name, and constitutes an inventory of manpower for military purposes. Classification and selection is the process by which the relative availability of the individual men for military service is determined, and those who are most available are selected. Induction is the process by which the men selected for military service pass from the status of civilians to the status of members of the land and naval forces of the United States.

Article 109 of the Articles of War (41 Stat. 787, 809; 10 U. S. C. 1581) provides:

At the time of his enlistment every soldier shall take the following oath or affirmation: "I, ----------, do solemnly

swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Articles of War." This oath or affirmation may be taken before any officer.

The War Department Mobilization Regulations in pertinent part provided (M. R. 1-7, Par. 13e):

> Induction ceremony.—
>
> All men successfully passing the physical examination will be immediately inducted into the Army. The induction will be performed by an officer in a short, dignified ceremony in which the men are administered the oath, Article of War 109:
>
> * * * * * *
>
> They will be informed that they are now members of the Army of the United States and given an explanation of the obligations and privileges. In the event of refusal to take an oath (or affirmation) by any individual he will not be required to receive it, but will be informed that this action does not alter in any respect his obligation to the United States.

Article 2 of the Articles of War (41 Stat. 787; 10 U. S. C. § 1473) provides:

> Art. 2. The following persons are subject to these articles and shall be understood

as included in the term "any person subject to military law", or "persons subject to military law", whenever used in these articles: *Provided*, That nothing contained in this Act, except as specifically provided in Article 2, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction unless otherwise specifically provided by law.

(a) All officers, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks Quartermaster Corps, and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same; * * *

* * * * * *

Act of October 6, 1942, 56 Stat. 770; 50 App. U. S. C., Supp. II, § 516:

Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended (section 301 et seq. of this appendix), shall be entitled to the relief and benefits accorded persons in military service under articles I, II, and III of this Act (sections 510 et seq., and 530 et seq. of this appendix) during the period beginning on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to re-

[redacted]

port for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service.

Letter from Chief, Military Affairs Section, Judge Advocate General's Division:

JUNE 6, 1941.

Military Affairs
JAG 327.36

Major BERNARD A. BROWN,
Assistant Corps Area Judge Advocate,
Seventh Corps Area,
Omaha, Nebraska.

DEAR MAJOR BROWN: There has been referred to this section for reply your letter to Lieutenant Colonel Loren F. Parmley, J. A. G. D., dated May 26, 1941, which relates to the status of Jesus Ramirez, Selectee, Fort Francis E. Warren, Wyoming, a prisoner awaiting trial by court martial for failing to obey a lawful command to put on his uniform.

The specific question presented is set forth in the letter mentioned as follows:

"Does the 'administration' of the oath, the acceptance of which was refused by selectee, constitute 'induction'?"

The Selective Training and Service Act of 1940 (Public, No. 783, 76th Cong.) contains no provision which expressly stipulates when a selectee is to be regarded as having been inducted. For this reason, the determination of this question must be made in the light of the applicable regulations which have been promulgated pursuant to that act. Pertinent extracts from those regulations (MR 1-7, par. 13e; SSR,

par. 429) are set forth in your letter, and after due consideration of these, together with the applicable statutory provisions, you reach the following conclusions:

"1. That the only purpose of the administration of the oath as set out in MR 1–7, Paragraph 13e, is for the purpose of informing the individual of his obligations and responsibilities to the United States of America, and his acquiescence in, or acknowledgment of this obligation, by some overt act indicating acceptance thereof is immaterial.

"2. That induction is complete immediately upon full acceptance of the individual by the government. The oath or any act or requirement thereafter is ministerial only and is not necessary to the completion of induction.

"3. For induction no acquiescence or acceptance on the part of the individual is required."

Generally speaking, the above-quoted conclusions are believed to be sound, and it therefore follows that a refusal on the part of a selectee to take the prescribed oath does not legally affect the validity of his induction.

Yours very truly,

FRED W. LLEWELLYN,
Colonel, J. A. G. D.,
Chief, Military Affairs Section.

U. S. GOVERNMENT PRINTING OFFICE: 1944

SUPREME COURT OF THE UNITED STATES.

No. 215.—October Term, 1943.

Arthur Goodwyn Billings, Petitioner, vs. Karl Truesdell, Major General, United States Army.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[March 27, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

Sec. 11 of the Selective Training and Service Act of 1940 (54 Stat. 894, 50 U. S. C. App. § 311) provides that "No person shall be tried by any military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act."[1] Petitioner Billings, who is held by the Army on a charge of a violation of the Articles of War, claims that this provision of the Act exempts him from military jurisdiction and makes him responsible solely to the civil authorities. The answer turns on whether or not Billings has been "actually inducted" into the Army. These are the facts.

Billings claims to be a conscientious objector. He registered under the Act with Local Board No. 1 of Ottawa County, Kansas, stating on his card at the time that he would never serve in the Army. He was given a 1-B classification because of defective eyesight but was reclassified as 1-A in January, 1942. The local board rejected his claim that he was a conscientious objector. He appealed to the board of appeal which affirmed the ruling of the

[1] Sec. 11 so far as material here provides: "Any person . . . who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act . . . shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by an military or naval court martial in any case arising under this Act unless such person has been actually inducted for the training and service prescribed under this Act or unless he is subject to trial by court martial under laws in force prior to the enactment of this Act."

local board. Though petitioner resolved never to serve in the Army, he desired to comply with all of the requirements of Selective Service short of actual induction, so that he might avoid all civil penalties possible. Accordingly, he consulted with draft officials in Texas and faculty members at the University of Texas where he taught and, concluded that taking the oath was a prerequisite to induction into the armed forces. He thought he might be finally rejected by the Army on account of defective eyesight. But he resolved that if he was not rejected at the induction station, he would not take the oath but would turn himself over to the civil authorities. He was ordered by his local board to report on August 12, 1942 and to proceed to the induction center at Fort Leavenworth. He joined the group selected for induction and was transported to Fort Leavenworth where he and the others in his group spent the night in the barracks. The next morning after breakfast in the mess hall petitioner was given both the physical and mental examinations during which he made clear to the examining officials his purpose not to serve in the Army. He then reported to the officer who passed on the results of the examinations and who told him that he had been put in Class 1-B. He then reported to the induction office and told the officers in charge that he refused to serve in the Army and that he wanted to turn himself over to the civil authorities. They said that he was already under the jurisdiction of the military and put him under guard to prevent him from leaving the reservation. With their consent, however, he used the telephone and procured the services of an attorney whom he retained to file a petition for *habeas corpus* on his behalf. Thereupon an Army officer read petitioner the oath of induction which petitioner refused to take. He was advised that his refusal made no difference, that "You are in the army now." He was then ordered to submit to finger-printing. He refused to obey. Military charges were preferred against him for willful disobedience of that order.

On August 14, 1942, petitioner filed this petition for a writ of *habeas corpus* alleging that he was not a member of the armed forces of the United States, that he was not subject to military jurisdiction, and that if he had violated any laws they were the civil laws of the United States. The writ issued. Respondent filed a return and a hearing was had at which petitioner testified. The District Court discharged the writ and remanded petitioner to respondent's custody, holding that petitioner was subject to mili-

tary jurisdiction. 46 F. Supp. 663. The Circuit Court of Appeals affirmed, holding that "Induction was completed when the oath was read to petitioner and he was told that he was inducted into the Army." 135 F. 2d 505, 507. The case is here on a petition for a writ of certiorari which we granted because of the importance of the problem in the administration of the Act.

I.

It is conceded that petitioner was not "actually inducted" in the Army within the meaning of § 11 of the Act when he was ordered to report to the induction station. But it is contended that from that time on he was subject to at least a limited military jurisdiction by reason of the Articles of War.

Among those whom Article 2 of the Articles of War (41 Stat. 787, 10 U. S. C. § 1473) subjects to military law are all persons "lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same." This provision standing alone would have made petitioner subject to military law from August 12, 1942, the date when he was required by the local board to present himself for induction. That was indeed the consequence under the Selective Draft Act of 1917 (40 Stat. 76). *Franke* v. *Murray*, 248 Fed. 865; *United States* v. *Bullard*, 290 Fed. 704; Digest Op. J. A. G. 1912-1930, Sec. 2238; 2 Op. J. A. G. (1918) 327.3; Second Report, Provost Marshal General (1918), p. 221. The Articles of War then in force (39 Stat. 651) had substantially the same provision as the present Article 2. Sec. 2 of the 1917 Act provided, moreover, that "All persons drafted into the service of the United States . . . . shall, from the date of said draft or acceptance, be subject to the laws and regulations governing the Regular Army . . . ." 40 Stat. 78. And the regulations under the 1917 Act stated that when a registrant was ordered to report to a local board or a state adjutant general for duty he was "in the military service" from and after the day and hour thus specified. §§ 133, 159D, 159E, 159F, 159G, 161. And see *United States* v. *McIntyre*, 4 F. 2d 823. But the present Act and the regulations promulgated under it are differently designed.

Sec. 3 of the Act provides that "no man shall be inducted for training and service under this Act unless and until he is acceptable to the land or naval forces for such training and

service and his physical and mental fitness for such training and service has been satisfactorily determined." Moreover, as we have noted, Congress by § 11 withheld from military courts martial jurisdiction over cases arising under the Act unless the person involved had been "actually inducted" or "unless he is subject to trial by court martial under laws in force prior to the enactment of this Act." The "actually inducted" clause of § 11 was offered as an amendment on the floor of the Senate by Senator Bone. 86 Cong. Rec. 10895. It was designed, as stated by the Senate conferees, to give civil courts jurisdiction over violations of the Act prior to induction for training in substitution for the House provisions that civil and military courts should have concurrent jurisdiction in such cases. 86 Cong. Rec. 11710, 12039, 12084. In view of this legislative history the Congress can hardly be presumed to have restored by the second "unless" clause in § 11 what it took away by the first "unless" clause. That is to say, § 11 of the Act read together with § 3 indicates to us a purpose to vest in the civil courts exclusive jurisdiction over all violations of the Act prior to actual induction. It is suggested, however, that prior to that time a selectee may be subject to military jurisdiction by reason of Art. 2 of the Articles of War and be prosecuted before courts martial for all offenses proscribed by the Articles, provided those acts are not made criminal by the Act. Under that view a selectee who failed to report for induction (*Bowles* v. *United States*, 319 U. S. 33) or who having reported, refused to be examined (*United States* v. *Collura*, 139 F. 2d 345) could be prosecuted for such offenses only in civil courts. § 11. But since by Art. 2 he became a soldier when ordered to report, he could be prosecuted by the military for those offenses which were proscribed by the Articles of War but not by the Act.

We think that is too narrow a reading of § 11 of the Act. As we pointed out in *Falbo* v. *United States*, 320 U. S. 549, 552, the mobilization program established by the Selective Service System is designed to operate "as one continuous process for the selection of men for national service"—a process in which the civil and military agencies perform integrated functions. The examination of men at induction centers and their acceptance or rejection are

parts of that process. Induction marks its end. But prior to that time a selectee is still subject to the Act and not yet a soldier. A case involving his rights or duties as a selectee prior to that event is a case arising under the Act. The civil authorities not the military are charged with the duties of enforcement at that stage of the process. That necessarily means that the measure of a selectee's rights and duties is to be found in the Act not in the Articles of War. For § 16(a) of the Act suspends all laws or parts thereof which are in conflict with its provisions.

We are supported in that view by the administrative construction of the Act. The regulations promulgated under it define a "delinquent" as one who is "liable for training and service" under the Act and "who fails or neglects to perform any duty required of him" by the Act or the regulations made pursuant thereto. § 601.5 And Part 642, which contains detailed provisions concerning the rights and duties of "delinquents", provides: "Every registrant who has heretofore or who hereafter fails to comply with an Order to Report for Induction or an Order to Report for Work of National Importance shall be reported promptly to the United States Attorney . . . ; provided that if the local board believes that by reasonable effort it may be able to locate the registrant and secure his compliance, it may delay the mailing of such Delinquent Registrant Report for a period not in excess of 30 days." § 642.41(a). Moreover, § 642.42(a) provides: "After a delinquent has been reported to the United States Attorney, it is the responsibility of the United States Attorney to determine whether he shall be prosecuted. Before permitting such a delinquent to be inducted or assigned to work of national importance, the local board should obtain the views of the United States Attorney concerning such action." We will develop shortly the place of such regulations in the Selective Service System. It is sufficient at this point to note that the regulations treat the problems of "delinquents" as matters exclusively for the civil authorities.[2] We cannot believe that the Act would have been given that construction if, as is now contended, the selectee became subject to even a limited military jurisdiction prior to induction.

[2] While the regulations governing "delinquents" cited in the text are those presently in force, the ones in effect at the time of Billings' refusal to be inducted were of the same tenor and were then included in § 601.5, § 642.4, § 642.5.

It should also be noted that these regulations contain detailed provision for the parole of persons convicted of violations of the Act. §§ 643.1 *et seq.*

II.

Respondent argues in the second place that petitioner became a soldier when the Army accepted him after his examinations were completed. That argument is based largely on the War Department Regulations.

The War Department Regulations[3] in force in August, 1942 (Mobilization Regulations No. 1-7, October 1, 1940) provided in Sec. II, par. 6, that "The function of the induction station is to provide the final examinations for registrants selected for induction and the induction of those acceptable to the Army." Sec. II, par. 13(e), entitled "induction ceremony" provided: "All men successfully passing the physical examination will be immediately inducted into the Army. The induction will be performed by an officer in a short, dignified ceremony in which the men are administered the oath, AW 109: 'I, _____, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and Articles of War.' They will be informed that they are now members of the Army of the United States and given an explanation of their obligations and privileges. In the event of refusal to take an oath (or affirmation) by any individual he will not be required to receive it, but will be informed that this action does not alter in any respect his obligation to the United States."

The argument is that since the Army Regulations do not condition a selectee's entry into the Army on his subscribing to the oath,[4] induction must take place at some anterior point of time. It

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Those required to register under the Act may be paroled by the Attorney General on the recommendation of the Director of Selective Service for induction or for other assignments. § 643.2. The Attorney General has the power to impose "such terms and conditions as he may deem proper" upon the parolee and shall supervise him, and may suspend or revoke the parole, except when the parolee is "in the active land or naval forces of the United States." §§ 643.8, 643.9. And Army Regulations No. 615-500, Sec. II, par. 7(b)(5) provide that registrants convicted of violation of the Act "will be accepted for induction at any time," provided the Attorney General of the United States has granted parole "for the purpose of induction."

[3] These were superseded September 1, 1942, by Army Regulations No. 615-500.

[4] The case of a selectee is distinguished from that of an enlistee who is required by Art. 109 of the Articles of War to take the oath. Identical requirements in the predecessor Articles of War applicable to enlistees were construed as inapplicable to draftees under the Selective Draft Act of 1917. See 1 Op. J. A. G. 169 (1917); Franke v. Murray, *supra*, pp. 868-869.

is said that while § 3 of the Act provides that a selectee shall not be inducted "until he is acceptable" to the Army, there is nothing in the Act which postpones induction beyond that time. The induction ceremony described in Sec. II, par. 13(e) of the regulations is said to be a formal exercise which solemnifies the occasion and during which the soldier is advised concerning his obligations and responsibilities to the United States. See *United States* v. *Smith*, 47 F. Supp. 607. The statement in Sec. II, par. 13(e) that those who pass the examination "will be immediately inducted into the Army" is read to mean that selectees shall thereupon be accepted as soldiers. A statement by an officer in authority that they are accepted, followed by the reading of the oath and such other explanation as may be required completes the ceremony.

That view finds support in informal rulings of the Judge Advocate General's office.[5] And War Department Regulations have the force of law as we recently had occasion to reaffirm in *Standard Oil Co.* v. *Johnson*, 316 U. S. 481, 484.

But that circumstance is complicated here by the division of jurisdiction between the civil and military authorities which the Act creates. The President is authorized "to select and induct" men into the armed forces "in the manner provided in this Act". § 3(a). No man shall be "inducted for training and service under this Act unless and until he is acceptable" to the armed services. § 3(a). And the civil authorities retain jurisdiction over him until he is "actually inducted". § 11. Thus it seems clear, as we have already said, that the Act, rather than the War

[5] The following propositions were submitted to the Chief, Military Affairs Section of the Judge Advocate General's office: "1. That the only purpose of the administration of the oath as set out in MR 1-7, Paragraph 13e, is for the purpose of informing the individual of his obligations and responsibilities to the United States of America, and his acquiescence in, or acknowledgment of this obligation, by some overt act indicating acceptance thereof is immaterial. 2. That induction is complete immediately upon full acceptance of the individual by the government. The oath or any act or requirement thereafter is ministerial only and is not necessary to the completion of induction. 3. For induction no acquiescence or acceptance on the part of the individual is required."

On June 6, 1941, the following informal ruling was made: "Generally speaking, the above-quoted conclusions are believed to be sound, and it therefore follows that a refusal on the part of a selectee to take the prescribed oath does not legally affect the validity of his induction." We are advised by the Judge Advocate General on February 4, 1944, in a supplemental memorandum filed by the Solicitor General that although that opinion was expressed informally by letter and not in a formal opinion it "represented the views of The Judge Advocate General" and that those views "have not been modified and are hereby adhered to."

Department Regulations or the Articles of War, determines the rights and duties of selectees, as distinguished from inducted men. The manner and method of effecting an induction into the Army are thus left for the War Department. But the power of the President under the Act "to select and induct" men includes the power to determine when the selective process is completed. It is only after that process is finished that a selectee is eligible for induction.

That view runs throughout the Selective Service Regulations promulgated under the Act. They are the regulations which have special relevancy here. The rule-making power under the Act is vested in the President. § 10(a)(1). The President in turn is given the power to delegate that authority.[6] § 10(b). And during the period here in question, as at the present time,[7] the President had delegated it to the Director of Selective Service. Exec. Order, No. 8545, Sept. 23, 1940, 5 Fed. Reg., pp. 3779, 3781. The Act and the regulations promulgated under it give the selective process its integrated nature. *Falbo* v. *United States, supra.* They determine the role which the military as well as the civilian authorities are to play in the administrative process of selection. *Id.* As in other instances (*United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 549; *Gray* v. *Powell,* 314 U. S. 402) the interpretations of an Act of Congress by those charged with its administration are entitled to persuasive weight.

As we have said, the Selective Service Regulations support our interpretation of the Act. Thus it is provided that while a selectee is appealing or otherwise contesting his classification, his induction shall be stayed. §§ 625.3, 626.14, 627.41, 628.7. And, as we have noted, when a "delinquent" has been reported to a United States Attorney, the local board shall not order him to report for induction without obtaining the views of the United States Attorney. These provisions, as well as those governing the control of the local boards over the orders to report for induction, which we will come to shortly, are framed on the theory that the time when a selectee's status may change from civilian to soldier

[6] Sec. 10(b) as originally enacted contained no limitation as to the persons to whom that authority might be delegated. But by the Act of December 5, 1943, 57 Stat. 598, § 10(b) was amended to read: "The President is authorized to delegate to the Director of Selective Service only, any authority vested in him under this Act (except section 9)."

[7] See Exec. Order No. 9410, December 23, 1943, 8 Fed. Reg. 17319.

is subject to the terms and requirements of the Act. Thus they confirm our construction of the Act.

The Selective Service Regulations also draw a distinction between acceptance (or being found acceptable) by the Army and induction. During the period here in question an inducted man was defined as "a man who has become a member of the land or naval forces through the operation of the Selective Service System." 32 Code Fed. Reg. 1941 Supp. § 601.7. Induction station was defined as any camp, etc. "at which selected men are received by the military authorities and, if found acceptable, are inducted into military service." § 601.8. And though the regulation governing the reception of selected men at the induction station referred to their treatment "pending their induction or rejection" (§ 633.8), "induction" was not otherwise used in the sense of "acceptance". For it was defined in the very next regulation in the following manner: "Induction. At the induction station, the selected men found acceptable will be inducted into the land or naval forces." § 633.9.

These regulations thus suggest that induction follows acceptance and is a separate process. Read in that light the War Department Regulations may be reconciled with the regulations under the Act. For as we have seen, the War Department provided by regulation at the time Billings appeared at Fort Leavenworth that the "induction *will be performed* by an officer in a short, dignified ceremony in which the men are administered the oath", etc. (Italics added.)

We are confirmed in this conclusion by recent amendments both to the Army Regulations and to the Selective Service Regulations. The Army Regulations, as amended March 30, 1943, now state respecting the "induction ceremony", that "The induction will be performed by an officer who, prior to administering the oath, will give the men *about to be inducted* a short patriotic talk" (italics added). This makes unambiguous the fair inference in the earlier Army Regulations that selectees were inducted *by* the ceremony and not before it.

Moreover, the Selective Service Regulations have been amended in recent months so as to provide for preinduction physical examinations before a registrant "is ordered to report for induction." § 629.1. As under the former regulations, the group to be forwarded for examination by the military authorities is assembled by the local board and given certain instructions and credentials.

§ 629.22. Registrants in certain classes "may be inducted into service at the induction station upon being found qualified for service", provided they make written request of their boards and provided there is no appeal pending in their cases and the appeal period has expired. § 629.23. All other registrants who are given the preinduction examination are returned to their local board when the examination is completed. § 629.22(e). Those found acceptable by the Army or Navy are later ordered to report for induction. §§ 632.1 *et seq.* Local boards, in filling calls received, are authorized to allow twenty-one days before induction to those who "have been found to be acceptable to the Army." § 632.4. This takes the place of the earlier system whereby selectees were first inducted and then given, if they desired, furloughs to attend to their personal affairs. Army Reg. No. 615-500, September 1, 1942, Sec. II, par. 16.

We mention these recent regulations because they perpetuate the distinction between acceptance or being found acceptable and induction which appeared in the regulations when Billings reported at the induction station. That these amendments do not effect any change in the concept of "induction" is apparent from the fact that its definition has remained practically the same from the time when Billings reported at the induction station to the present time.[8] It could hardly be maintained that a selectee who has passed his preinduction physical examination but who has not been ordered to report for induction is subject to military jurisdiction. And it would not seem permissible to hold that he who failed to report for induction at the end of the so-called twenty-one day furlough period could be prosecuted by a court martial because he had been "actually inducted" within the meaning of § 11. But if that is true, it is difficult to see why there would be a difference in result if the interval between the time when he is found acceptable or is accepted and the ceremony of induction were only a few minutes, as in the present case, rather than a few weeks.

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[8] As we have indicated the Selective Service Regulations in § 633.9 defined "induction" at the time Billings reported to the induction station as follows: "At the induction station, the selected men found acceptable will be inducted into the land or naval forces." At the present time § 633.25 defines "induction" as follows: "At the Army Reception Center, the Navy Recruiting Station, or the induction station, as the case may be, the selected men who have been forwarded for induction and found acceptable will be inducted into the land or naval forces."

III.

It is finally contended, as the Circuit Court of Appeals held, that petitioner was inducted when the oath was read to him and he was told that he was in the Army. At that time he had been placed under guard and was retained against his will. But the argument is that the military has authority to exercise force for the purpose of inducting selectees into the service.

We have no doubt of the power of Congress to enlist the manpower of the nation for prosecution of the war and to subject to military jurisdiction those who are unwilling, as well as those who are eager, to come to the defense of their nation in its hour of peril. *Arver* v. *United States*, 245 U. S. 366. But Congress did not choose that course in the present emergency. It imposed a separate penalty on those who defied the law—prosecution by the civil authorities and a maximum penalty of five years imprisonment or a $10,000 fine or both. § 11. We say that that penalty was aimed at those who defied the law, though in the words of § 11 it includes, of course, only those who have not been "actually inducted". But we give "inducted" the meaning it has in the Act and in the regulations. As we have pointed out, an inducted man is defined by the Selective Service Regulations as one "who has become a member of the land or naval forces through the operation of the Selective Service System." § 601.7. That suggests that he becomes "actually inducted" within the meaning of the Act by submitting to the Selective Service System. The fact that he is not a volunteer is, of course, irrelevant as the Act was designed as a "fair and just system of selective compulsory military training and service." § 1(b). But induction under the Act and the present regulations is the end product of submission to the selective process and compliance with the orders of the local board.

It must be remembered that § 11 imposes on a selectee a criminal penalty for any failure "to perform any duty required of him under or in the execution" of the Act "or rules or regulations made pursuant thereto." He who reports to the induction station but refuses to be inducted violates § 11 of the Act as clearly as one who refuses to report at all. *United States* v. *Collura*, *supra*. The order of the local board to report for induction includes a command to submit to induction. Though that

command was formerly implied,[9] it is now express. The Selective Service Regulations state that it is the "duty" of a registrant who receives from his local board an order to report for induction "to appear at the place where his induction will be accomplished", "to obey the orders of the representatives of the armed forces while at the place where his induction will be accomplished", and "to submit to induction". § 633.21(b). Thus it is clear that a refusal to submit to induction is a violation of the Act rather than a military order. The offense is complete before induction and while the selectee retains his civilian status. That circumstance throws light on the meaning of the words "actually inducted" as used in § 11 of the Act. Congress by accepting the Bone amendment to § 11 specified the maximum penalty to be imposed on those who violated the Act or disobeyed an order of their board prior to their induction.[10] It also withheld from military courts jurisdiction over those offenders. At the same time Congress did not authorize the Army to search out delinquents wherever they might be and induct them without more. We must therefore assume that Congress as a matter of policy decided that those who disobeyed the order of their board and refused to be inducted were to be punished by the civil authorities and by them alone.[11] If forcible seizure or detention of such offenders by the Army were sanctioned, the Congressional policy

[9] See §§ 633.1, 633.2, 633.6 in force in August, 1942.

[10] The Conference Report stated: "The Senate bill provided that persons subject to the bill who fail to report for duty as ordered should be tried exclusively in the district courts of the United States and not by military and naval courts martial, unless such persons had actually been inducted for the training and service prescribed in the bill or unless they were subject to trial by court martial under laws in force prior to the enactment of the bill. The House amendment in such cases gave the courts martial and the district courts concurrent jurisdiction, and made failure of persons to report for duty subject to the laws and regulations concerning that branch of the land and naval forces to which they were assigned from the date they were required by the terms of the order to obey the same, even though they had not actually been inducted.

"The conference agreement contains the provisions of the Senate bill in this respect." 86 Cong. Rec. 12039.

[11] It is true that for other purposes Congress has treated selectees who are ordered to report for induction the same as those in military service. Thus the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U. S. C. App. § 501, 54 Stat. 1178), which originally obtained only to "persons in the military service", were extended by an Act of October 6, 1942, to selectees from the date of receiving an order to report until the time of actually reporting for induction. 50 U. S. C. App. Supp. II, § 516, 56 Stat. 770. But, as we have pointed out, the Selective Service Act and the regulations under it have not made the selectee's civilian status change to that of soldier at either point of time.

of providing the maximum punishment for their delinquency would be undermined.

Moreover, it should be remembered that he who reports at the induction station is following the procedure outlined in the *Falbo* case for the exhaustion of his administrative remedies. Unless he follows that procedure he may not challenge the legality of his classification in the courts. But we can hardly say that he must report to the military in order to exhaust his administrative remedies and then say that if he does so report he may be forcibly inducted against his will. That would indeed make a trap of the *Falbo* case by subjecting those who reported for completion of the Selective Service process to more severe penalties than those who stayed away in defiance of the board's order to report.

These considerations together indicate to us that a selectee becomes "actually inducted" within the meaning of § 11 of the Act when in obedience to the order of his board and after the Army has found him acceptable for service he undergoes whatever ceremony or requirements of admission the War Department has prescribed.

We are not concerned with the wisdom of either the "actually inducted" clause in § 11 or the procedure for selection and induction which has been prescribed under the Act. Nor is it for us to decide whether the maximum penalty provided by Congress is adequate for those who flout the Act while the nation fights for its very existence. But where Congress has drawn the line between civil and military jurisdiction it is our duty to respect it.

Reversed.

Mr. Justice ROBERTS is of the view that the judgment should be affirmed for the reasons stated in the opinion of the Circuit Court of Appeals, 135 F. 2d 505.

Mr. Justice FRANKFURTER.

Under the Selective Service Act of 1940 unlike that of 1917, a selectee is not subject to trial by a military court martial until he has been "actually inducted" for training and service. But Congress did not define when he was so "inducted". It thus left to judicial construction when the civilian status ceased and the

military status began. In a matter of this sort, involving as it does the process of compulsory recruiting of the nation's Army in the midst of war, it is of vital importance that the line be drawn as definitely as the legislation reasonably permits in order that ambiguity and controversy be reduced to a minimum.

In the *Falbo* case we held the other day that "The connected series of steps into the national service which begins with registration with the local board does not end until the registrant is accepted by the army . . . ." 320 U. S. 549, 553. The line that was thus drawn—when "the connected series of steps" has ended—seems to me to be the line to draw between the civil and military status of a registrant. In other words, when acceptance of a registrant is communicated by the Army, the Army has made its choice. The man is then in the Army. Such was the ruling, and I believe the correct ruling, of the court below. 135 F. 2d 505. According to the Court's opinion, as I understand it, the Act itself does not draw this line but Congress has authorized such a line to be drawn by appropriate regulations. On that assumption, I do not dissent.